

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2008-360-S

IN RE:)
Happy Rabbit, LP)
on Behalf of Windridge Townhomes,)
)
Complainant,)
)
v.)
)
Alpine Utilities, Incorporated,)
)
Respondent.)

MEMORANDUM/AFFIDAVIT
IN SUPPORT
OF COMPLAINANT’S
REQUEST FOR
SUPERSEDEAS ORDER

INTRODUCTION

Happy Rabbit, LP on Behalf of Windridge Townhomes, (hereinafter, “Happy Rabbit”) filed its Request for Supersedeas Order with the Public Service Commission of South Carolina (hereinafter as, “PSCSC”) on September 22, 2009. This filing relates back to, and incorporates by reference, Happy Rabbit’s Request for Supersedeas Order. Happy Rabbit’s Memorandum/Affidavit in Support of its Request for a Supersedeas Order is as follows:

MEMORANDUM IN SUPPORT OF REQUEST FOR SUPERSEDEAS ORDER

I. Happy Rabbit’s Affidavit in support hereof is attached hereto as Exhibit “A”.

II. Happy Rabbit’s Request for Supersedeas Order is based on the following grounds:

a. It is axiomatic that the PSCSC must carefully consider acting to prevent a contested matter from becoming moot;

It is obvious that a failure by the PSCSC to grant Happy Rabbit’s Request for Supersedeas Order will cause Happy Rabbit’s Appeal to become moot. Happy Rabbit is justifiably concerned that Alpine will not be able to fund a refund, if Alpine loses this Appeal. As this Commission knows, there is no statute of limitations under S.C. Code Ann. R. 103-533.3 and interest would be payable. The right of Happy Rabbit to seek a refund under the Willful Overcharge Regulation contains no guarantee that Happy Rabbit can recover such refund with

interest **(this problem is exacerbated by the fact that Alpine's willful conduct and overcharge extends back to July 1, 2002, the date of enactment of Section 27-33-50).**

b. In the case, *sub judice*, Happy Rabbit will be deprived of the benefit of a reasonable result of the Appeal, if the PSCSC does not grant its Request for Supersedeas Order.

For the same reasons stated in Part II (a) herein, Happy Rabbit will be deprived of the benefit of a reasonable result of the Appeal, if the PSCSC does not grant its Request for Supersedeas Order.

c. In order to maintain the *status quo* between the parties herein, the PSCSC must grant Happy Rabbit's Request for Supersedeas Order.

For the same reasons stated in Part II (a) herein, the PSCSC must grant Happy Rabbit's Request for Supersedeas Order to maintain the *status quo* between the parties herein.

d. The PSCSCs failure to grant Happy Rabbit's Request for Supersedeas Order will cause irreparable harm to Happy Rabbit and a miscarriage of justice.

For the same reasons stated in Part II (a) herein, the PSCSCs failure to grant Happy Rabbit's Request for Supersedeas Order will cause irreparable harm to Happy Rabbit and a miscarriage of justice.

e. Happy Rabbit has a high likelihood of success on the merits of the Appeal.

Happy Rabbit submits that it has a high likelihood of success on the merits of the Appeal. Happy Rabbit's case has not been heard on the merits in the Circuit Court or before this Commission. A dismissal under Rule 12(b)(6) means that any failure to state a Complaint can be cured, by re-filing the Complaint. Furthermore, because Alpine has admitted that its violations of Section 27-33-50 continue on a monthly basis, including as of this writing, there are no statute of limitations restrictions on Happy Rabbit re-filing its Circuit Court Complaint, which is its obvious intention. In fact, counsel for Alpine "bragged"¹ that this Commission has allowed it to continue its conduct, which Happy Rabbit alleges is in violation of Section 27-33-50.

Alpine makes the obvious statement that, "...regardless of the Commission's views with respect to its jurisdiction in this docket, [a Circuit Court Order] cannot be reversed by

¹ Alpine's Counsel, wrote in correspondence that, "...in fact, by its recent action dismissing without prejudice your clients' complaints before it, the Public Service Commission is permitting Alpine to continue engaging in the conduct which forms the putative basis for your clients/circuit court action." (Correspondence from Ben Mustian of April 30, 2009).

the Commission as it lacks any authority to review orders of the circuit court.” There is no final Appellate Order in this matter and if there was such a final Appellate Order, Happy Rabbit would not be seeking a Supersedeas Order. Until such time, Happy Rabbit is confident that it will ultimately prevail and this matter will be returned to the PSCSC’s jurisdiction.

III. Happy Rabbit’s voluntary decision to establish an Escrow Account, equal to the monthly sewer charges from Alpine, vitiates the need for a Bond.

During the pendency of Happy Rabbit’s Complaint, Happy Rabbit was protected from Alpine Utilities, Incorporated’s (hereinafter as, “Alpine”) discontinuance of service to Happy Rabbit’s tenants, residing in twenty-three duplex buildings (See, R. 103-538 (B), “...Service shall not be discontinued if the complainant requests in writing a hearing before the commission”).

Happy Rabbit has maintained an Escrow Account at a Columbia, South Carolina branch of Carolina First Bank, from the first month of its dispute with Alpine, through this writing, wherein Happy Rabbit has deposited a monthly amount equal to its monthly sewer charge from Alpine for Happy Rabbit’s forty-six tenants, in twenty-three duplex buildings (see, Affidavit of James C. Cook, attached hereto as Exhibit “A”).

Happy Rabbit seeks the continued protection of R. 103-538(B) during the pendency of its appeal before the South Carolina Court of Appeals, for the reason set forth in detail in its Request for Supersedeas Order, previously filed with the PSCSC on September 22, 2009.

Happy Rabbit hereby consents to any reasonable additional conditions, the PSCSC wishes to place on this Account (i.e. requirements for continuing and future monthly deposits, restrictions on withdrawal therefrom, notices of deposit thereto, to the PSCSC and Alpine, etc.). The existence of the Escrow Account and reasonable conditions to be imposed by the PSCSC, if any, insure Happy Rabbit’s payment obligations. **Alpine’s request for a Bond and for a Bond amount far exceeding the amount in controversy is punitive, unwarranted and unnecessary.**

CONCLUSION

Based on the foregoing, Happy Rabbit’s previously filed Request for a Supersedeas Order and the file in this case; Happy Rabbit’s Request for a Supersedeas Order is properly

supported and justified and should be granted with protection for Happy Rabbit from Alpine discontinuing sewer service, to preserve the *status quo*.

Respectfully submitted,

/s/

Timothy F. Rogers
Richard L. Whitt
Jefferson D. Griffith, III

Counsel of Record for Happy Rabbit, LP on
behalf of Windridge Townhomes

Columbia, South Carolina
October 9, 2009